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BOOK REVIEWS.

EUGENE UNTERMYER, *Editor-in-Charge.*

HANDBOOK OF THE LAW OF MUNICIPAL CORPORATIONS. By ROGER M. COOLEY, LL.M. St. Paul: WEST PUBLISHING Co. 1914. pp. xii, 711.

There is perhaps no field of our entire law that is more "spotted" than that which we designate as the "law of municipal corporations." In spite of the monumental treatises that have been written upon this subject, there is a distressing amount of vagueness and inconsistency in many of the doctrines and principles that have been evolved. Prof. Cooley has set himself a difficult task. He has essayed "to give a clear and concise treatment of those fundamental principles which must be and are applied in any attempt to formulate or construe the law of municipal corporations as found in the various statutes." In a brief handbook dealing with so vast and complicated a subject there is obviously little opportunity for a critical and comparative analysis of these fundamental principles. To the extent that these principles are themselves in more or less logical contradiction conflicts and ambiguities of declaration must be expected. In plain point of fact this extent is by no means inconsiderable. However, even though due allowance be made for the necessities of brief treatment, several criticisms of this work may be recorded.

Thus the author has somewhat overstressed the statutory sources of the law of municipal corporations. He has not indicated with sufficient force that an already large and ever increasing proportion of the law upon this subject originates in the construction and application of constitutional provisions. It is almost astounding, for example, to find that the constitutional scheme of allowing cities to frame their own charters, for which provision is now made in one-fourth of our state constitutions, is discussed in a single brief paragraph (pp. 44, 45); that it is treated under a chapter entitled "Creation of Municipal Corporations," although the power in question is in no state (with the possible exception of Oregon) conferred upon communities but only upon corporations already created; that the numerous difficult questions of law to which this scheme has given rise are dismissed with one or two assertions that are so broad as to be fairly meaningless, and with the citation of two Minnesota cases (p. 45); and that the subject is not mentioned at all in the chapter dealing with "Legislative Control" (Ch. III). Indeed this whole subject of legislative control, under which it would have been appropriate, in so far as is possible, to array the entire set of principles which govern the legal relations existing between municipal corporations and the states of which they are a part, is not satisfactorily handled. It is, for example, apparently the view of the author that the doctrine of an inherent right of local self-government in municipalities is the prevailing doctrine in most American jurisdictions (p. 72). Of the four cases cited in support of this doctrine, that of the Nebraska jurisdiction has been completely overruled, while the Michigan case is of doubtful pertinency and the New York case of no pertinency at all. Only the Indiana case is specifically in point. A single case might have been cited from each of the Kentucky (113 Ky. 540), Iowa (116 Ia. 96) and Texas (45 Tex. Crim. App. 1, repudiated in 97 Tex. 1, 12) jurisdictions; but Professor Cooley ought to have said

that "this principle has been denied in a few jurisdictions" only because it has not been urged in many jurisdictions. The entire history of legislative practices toward municipal corporations in the United States stands as a complete refutation of this doctrine of law, which has at most received expression and application in a very few cases and in less than half a dozen states.

Professor Cooley's specific applications of this doctrine are likewise open to criticism. He is by no means justified in declaring that it is "well recognized that . . . officers exercising purely municipal or local functions should be free from legislative control" (p. 73). Many of the cases cited in the notes to the section in which this declaration is made are cases which arose over the application of specific constitutional provisions. It is high time that the cases in this branch of the law which are hung upon constitutional provisions should be completely separated from these which are rested upon "general principles."

Again it may be remarked that the declaration to the effect that "it is equally well settled by repeated decisions that it rests with the inhabitants of a municipality to determine conclusively whether a debt shall be incurred for purely municipal purposes" is open to serious question. The citation of the state of Pennsylvania as being "the only exception" to the "wholesome doctrine" of the "celebrated Detroit park case" is, it would seem, wholly without warrant. The fact is that municipal corporations have seldom made the contention before the courts that they were protected against legislative domination by any such principle of law as this. The rule, therefore, has been discussed in very few cases. But the fact is, also, that there is scarcely a city of age or importance in the country that has not at one time or another been under statutory mandate to incur debts for purely municipal purposes, and in many cities at the present time no small part of the annual expenditures is made under legislative compulsion. Nor are the requirements of the legislature in this regard restricted to matters of state-wide as distinguished from local concern. If there exists in the body of our law any such principle as this it is certainly astonishing that, in spite of almost limitless opportunity for its application, it has in fact been invoked in an almost negligible number of cases.

Again it may be observed, although it must be admitted that the opinions expressed by the courts upon the subject are in a state of sublime disarray, that Professor Cooley's discussion of the protection against the legislature which the municipal corporation enjoys in its property, is more nebulous than the circumstances seem to require (pp. 88-92). He does not even indicate in this connection that the source of the corporation's right in this respect is to be found almost wholly in the general guarantee of due process of law.

It is not intended by what is here set down to imply that the author of this work has been careless and inaccurate. In many of his questionable statements of principle he has followed the writings of other and more exhaustive commentators and the views which have been put forward by certain courts as if they were generally accepted principles. The truth of the matter is that the law of municipal corporations is in a woful state of confusion. There is great need that the cases upon the subject should be discriminatingly and somewhat ruthlessly reviewed; that pages upon pages of dicta as well perhaps as certain ill-considered cases of renown, should be wholly discredited

as authorities; and that inconsistencies of doctrine as announced in the several branches of the subject (such, for example, as the inconsistencies in the application of the highly variable distinction between the municipal corporation in its public, governmental, or agency capacity and in its local or private capacity) should be set out in bold relief. Moreover this study of cases should be made in the light of an adequate and accurate knowledge both of the history and of the existing facts concerning constitutional provisions, legislative practices, and municipal charters. This history and these facts are revealed but dimly in the recorded decisions of the courts. In spite of Dillon, McQuillin, and other briefer commentators, there remains important work of a pioneer character in this field of law. Until such work shall have been done a satisfactory brief text upon this subject is very nearly an impossibility.

In those parts of his subject—and these are numerous—in which the law is in a state of comparative clearness, Professor Cooley's work is in every respect admirable. Moreover, it is well organized and discloses an unusual regard for proportion. In spite of the criticisms to which it is open, it will unquestionably serve with merit the needs not only of students but also of practitioners.

Howard Lee McBain.

MAGEE ON BANKS AND BANKING. A TREATISE ON THE LAW OF NATIONAL AND STATE BANKS INCLUDING THE CLEARING HOUSE AND TRUST COMPANIES. By H. W. MAGEE, B.L. Albany: MATTHEW BENDER & Co. 1913. pp. lvii, 1039.

This portly volume constitutes the second edition of "Magee on Banks and Banking," the first edition of which appeared in 1906. The panic of 1907 gave rise to so many new legislative regulations in the field of banking, and, in consequence, to so many new cases before the courts, that, in the interests of accuracy, a revision of the first edition became necessary.

As Mr. Magee points out in his preface, the main advance has been the settlement of "the question of the right of a State through its Legislature to deprive a citizen of the right of free banking, through restrictive legislation." "It is now settled," says the author, "that the business of banking, unless conducted as authorized by the legislative authority of the State, is forbidden to an individual." The Supreme Court of the United States has not as yet passed directly upon this question, but Mr. Magee points out that in the case of *Assaria State Bank v. Dolley* (1911), 219 U. S. 121, the Court held "that the Legislature of the State may impose incorporation as a police regulation and as a privilege of safety."

In view of the fact that the first edition of Mr. Magee's book has been so favorably known for a half-dozen years, and in view of the further fact that the changes made in the edition under review have not involved material changes in the structure of the volume, a detailed setting forth of the contents would constitute a work of supererogation. Suffice it to say that Chapters I to VIII inclusive deal in the main with questions of organization; Chapters IX to XII inclusive with the law of bank officers; Chapters XIII to XVIII inclusive with bank powers, the amendment of charters, etc.; Chapters XIX to XXXVIII inclusive with the banks' business activities; while Chapters XXXIX to XLVIII inclusive deal with such questions as liens, forfeitures, insolvency and dissolution. Separate chapters in